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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,945	08/26/2002	Stefan Stark	52790-00005	6005
7590	12/22/2004		EXAMINER	
J Kevin Gray Jenkens & Gilchrist Suite 3200 1445 Ross Avenue Dallas, TX 75202-2799				PATTERSON, MARC A
			ART UNIT	PAPER NUMBER
			1772	
DATE MAILED: 12/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/018,945	STARK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Marc A Patterson	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 October 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) 11-17 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) 1 and 2 is/are objected to.

8) Claim(s) 11-17 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION*****Election/Restrictions***

1. Newly submitted claims 11 – 17 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The newly submitted invention is directed to a protective device, having an opening in a longitudinal direction, and having borders of the opening positioned by an inherent dimensional stability within the corrugated tube.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 11 – 17 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

**WITHDRAWN REJECTIONS**

2. The 35 U.S.C. 112, second paragraph rejection of Claims 1 – 6, of record on page 2 of the previous Action, is withdrawn.

***Claim Objections***

3. Claims 1 – 2 are objected to because of the following informalities: In Claim 1, the meaning of the phrase ‘slitting the tube open along a generating line on the surface of the tube’ is unclear; the existence of the term ‘open,’ in the phrase, in particular, appears to be both superfluous and ambiguous. It is also not clear if the ‘line’ is a line that is defined on the surface of the tube by printing, prior to slitting, or if the line is a defined by the slit itself, after slitting. In

Claim 2, it is also unclear if the ‘line’ is a line that is defined on the surface of the tube by printing, prior to slitting, or if the line is a defined by the slit itself, after slitting. The meaning of the phrase ‘oblique with respect to the surface of the tube at the cut’ is also unclear, as it is unclear what direction on the surface the cut is oblique with respect to; the direction of the cut is therefore unclear. Appropriate correction is required.

4. Claim 6 is objected to because of the following informalities: The phrase ‘the protrusion’ has insufficient antecedent basis in Claim 2. Appropriate correction is required.

#### NEW REJECTIONS

##### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 – 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hegler et al (U.S. Patent No. 4,513,787) in view of Hegler (U.S. Patent No. 3,776,679).

With regard to Claims 1 – 2 and 7 – 10, Hegler et al discloses a method for producing a plastic, dimensionally stable corrugated tube (plastic corrugated sheathing hose, therefore dimensionally stable; column 1, lines 10 – 15) making the tube (column 3, lines 51 – 52) slitting the tube along a generating line (the hose is slit in a direction offset with respect to a radial direction of the hose, therefore a cut made in a cutting device, the cutter; column 3, lines 29 –

32), thus creating a slitted opening defined by two borders, and the cut open tube is passed through a deformation device subsequent to the cutting device (closure – operating device; column 3, lines 57 – 58) and compressed therein whereby the borders of the slitted opening slip over one another (the deflected sidewall, because of its elasticity, returns to undeflected position, therefore a self – compression; column 4, lines 6 – 10) then the border of the slitted opening on the outside is guided outward and is laid over the other border that was previously located on the outside (the arms which border the slitted opening and are resting on each other, therefore one on the inside and one on the outside, are pressed into a latched state; column 4, lines 10 – 15; Figures 4 and 5). Hegler et al fail to disclose a tube that is made by extruding the tube and providing it with corrugated peaks and troughs using a corrugator.

Hegler teaches that it is well known in the art to make a corrugated tube (column 1, lines 9 – 11) by extruding the tube and providing it with corrugated peaks and troughs inside a corrugator (the tubing is manufactured, as a rule, by extruding and then pressed into molds that corrugate by internal pressure; column 1, lines 14 – 18) for the purpose of obtaining a tube having perfect shaping (column 4, lines 12 – 14). Therefore, one of ordinary skill in the art would have recognized the advantage of providing for steps of extruding of the tube and providing it with corrugated peaks and troughs inside a corrugator of Hegler in Hegler et al, which is a corrugated tube, depending on the desired quality of shaping of the end product as taught by Hegler; the tube of Hegler et al is therefore still heated from extrusion when it is compressed, and is allowed to cool into a dimensionally stable article.

With regard to Claims 3 – 6, the tube disclosed by Hegler et al is corrugated, as discussed above, and therefore comprises corrugated peaks and troughs, and therefore comprises a

protrusion that is turned radially inward and extends parallel to the opening that is spaced apart from the slotted opening, one the side of that border previously positioned on the inside, the protrusion being in the form of a groove shaped orientation having the undulating profile of the tube and abutting against the border with its edge (the corrugation, therefore also abutting the corrugation; column 1, lines 10 – 15; Figure 5).

#### ANSWERS TO APPLICANT'S ARGUMENTS

##### Regarding the 112 Rejections

7. Applicant's arguments regarding the 35 U.S.C. 112, second paragraph rejection of Claims 1 – 6, of record in the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn.

##### Regarding the 103 Rejections

Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1 – 6 as being unpatentable over Hegler et al (U.S. Patent No. 4,513,787) in view of Hegler (U.S. Patent No. 3,776,679), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 8 of the remarks dated October 4, 2004, that Hegler et al does not teach that a closing force can be provided internally without a without a detent or snap – locking closure; Hegler et al also does not teach, Applicant argues, that a closing force can be obtained for a tube by cooling in a deformation device.

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However, a closing force that can be provided internally without a detent or snap – locking closure is not claimed, nor is a closing force that is obtained for a tube by cooling in a deformation device.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (571) 272 – 1497. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold

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Pyon, can be reached at (571) 272 – 1498. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

*Marc Patterson*

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*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
*1772*

*12/21/04*